TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~402~~ 1355

LEWIS WEITZEL, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

AUGUSTUS KAYSER, GEORGE GERKE, WM. KESSLER, PETER KESSLER, ADOLPH KNEIMULLER, AND GEORGE KARHOLF.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

~~APPEAL FROM THE COURT OF CLAIMS.~~

FILED APRIL 12, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 402.

LEWIS WEITZEL, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

AUGUSTUS KAYSER, GEORGE GERKE, WM. KESSLER, PETER KESSLER, ADOLPH KNEIMULLER, AND GEORGE KARHOLF.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court rooms, in the city of Cincinnati, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and second—present the honorable Philip B. Swing, district judge—among the proceedings had were the following, to wit:

AUGUSTUS KAYSER ET AL., PLAINTIFFS,
vs.
LEWIS WEITZEL, DEFENDANT.
No. 2512. Money.

Be it remembered that heretofore, to wit, on the fifteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, came the said plaintiffs by their said attorney and filed in the clerk's office of said court their certain petition in said cause, clothed in the words and figures following, to wit:

2 *Petition.*

Circuit court of the United States, southern district of Ohio.

AUGUSTUS KAYSER, GEORGE GERKE, WILLIAM KESSLER, PETER KESSLER, ADOLPH KNEIMULLER and GEORGE KARHOLF, partners as A. KAYSER and COMPANY, plaintiffs,
vs.
LEWIS WEITZEL, DEFENDANT.

And now comes Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph Kneimuller and George Karholf, partners doing business under the firm name of A. Kayser and Company, plaintiffs, and file this their petition against the said Lewis Weitzel, defendant, and say that on the tenth day of February, 1876, the commissioner of internal revenue illegally and wrongfully assessed against plaintiffs as distillers engaged in the business of distilling in the first collection district of the State of Ohio, an internal revenue tax of six hundred and ten $\frac{2}{100}$ ($610.02) dollars upon the product in spirits of an alleged excess of material used for the production of spirits over and above the producing capacity of the distillery of plaintiffs in the month of November, 1875, and caused the same to be forwarded and delivered to the said Lewis Weitzel, as collector of the said collection district, for collection.

Plaintiffs say that it is not true that there existed any such excess
3 of material used over the actual and lawful producing capacity of plaintiffs' distillery, but they say that said assessment was illegal and oppressive, and plaintiffs protested against the same.

Plaintiffs further say that the said Lewis Weitzel, under authority of his said office, made demand upon plaintiffs for said pretended taxes, and under compulsion of his said authority and to avoid distraint and seizure of their property and protesting against the payment thereof, plaintiffs did, on the 31st day of August, 1876, pay to the said Weitzel the said pretended taxes, to wit, the sum of six hundred and ten $\frac{2}{100}$ ($610.02) dollars. Plaintiffs further say that on the 23rd day of May, 1877, they made and filed in due form of law application to the said commissioner of internal revenue to refund and repay to them said sum so paid as

aforesaid, which claim was on the 29th day of May, 1877, rejected by said commissioner and plaintiff notified thereof by mail.

By reason of said premises plaintiffs have become entitled to claim and recover of the said defendant the said sum of six hundred and ten $\frac{2}{100}$ ($610.02) dollars with interest from the said 31st day of August, 1876.

Wherefore plaintiffs pray judgment against the said Lewis Weitzel in the said sum of six hundred and ten $\frac{2}{100}$ ($610.02) dollars with interest from the 31st day of August, 1876, and for their costs herein expended.

4 WARNER M. BATEMAN.
Attorney for Plaintiff.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

George Gerke, being first duly sworn, says that he is one of the plaintiffs in the within named cause and that he believes the statements of the foregoing petition to be true.

Sworn to before me this 15th day of June, 1877.

FLORIEN GIAUQUE,
Notary Public, Hamilton County, Ohio.

Præcipe.

AUGUSTUS KAYSER ET ALS.
vs.
LEWIS WEITZEL.

The clerk will issue summons for Lewis Weitzel, defendant Cincinnati, O., returnable according to law. Indorse, action for money only. Amount claimed $610.02 with interest from 31st day of August, 1876,

WARNER M. BATEMAN,
Att'y for Plaintiff.

5 And thereupon afterwards, to wit, but on the same day and year aforesaid, there was issued out of the clerk's office of said court our certain writ of summons against the said defendant, clothed in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America, to the marshal of the southern district of Ohio, greeting:

You are commanded to summon Lewis Weitzel, citizen of and resident in the State of Ohio, if he be found in your district, to be and appear in the circuit court of the United States, for the southern district of Ohio, aforesaid, at Cincinnati, on the 4th Tuesday in the month of June, 1877, to answer unto Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph Kneimuller and George Karholf, partners as A. Kayser & Co., citizen of and resident State of Ohio, in an action for money.

And have you then and there this writ.

Witness the honorable M. R. Waite, Chief Justice of the United States, this 15th day of June, A. D. 1877, and in the 101st year of the In-
6 dependence of the United States of America.

Attest:

[SEAL.] THOS. AMBROSE, *Clerk.*

And afterwards, to wit, on the 16th day of June, in the year aforesaid, came the said marshal, to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings endorsed thereon in the words and figures following, to wit:

Received this writ at Cincinnati, O., June 15th, 1877, and served the within named in Hamilton County, as follows: Lewis Weitzel, per. at 3.30 p. m., June 15th, 1877.

W. R. THRALL, *U. S. M.*,
By JNO. L. JEFFERIES, *Dept.*

7 And afterwards, to wit, on the thirty-first day of July, in the year aforesaid, came the defendant, by Channing Richards, his attorney, and by leave of court first had and obtained, filed in the clerk's office of the court aforesaid his certain answer in said cause, clothed in the words and figures following, to wit:

Answer.

Circuit court of the United States, southern district of Ohio.

AUGUSTUS KAYSER ET ALS., PLAINTIFF,
vs.
LEWIS WEITZEL, DEFENDANT. } No. 2512.

The defendant, Lewis Weitzel, denies that the assessment made against plaintiff by the commissioner of internal revenue on the 10th day of February, 1876, was illegal and wrongful, and says that an excess of material used over the actual and lawful producing capacity of plaintiffs' distillery did exist as determined by said commissioner.

CHANNING RICHARDS,
Att'y for Def't, Lewis Weitzel.

8 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Lewis Weitzel, the defendant, being duly sworn, says that the foregoing answer is true according to the best of his knowlege, information, and belief.

LEWIS WEITZEL.

Subscribed and sworn to before me this 31st day of July, 1877.
THOS. AMBROSE, *Clk.*

And afterwards, to wit, on the sixth day of December, in the year aforesaid, an entry was made upon the journal of said court in said cause, clothed in the words and figures following, to wit:

9 *Judgment.*

AUGUSTUS KAYSER ET AL.
vs.
LEWIS WEITZEL. } No. 2512. Money.

This day came the parties by their attorneys, and thereupon a jury being called, came, to wit: W. H. K. Boake, James Coates, William T. Evans, Lafayette Eggleston, Hugh Gibson, S. R. Hosmer, George W.

Jones, Joseph A. Morris, Charles L. Madison, George Y. Miller, S. P. Nickells, and John Steel, who being duly empaneled and sworn well and truly to try the issue joined between the parties, upon their oaths do find the issue to be in favor of the plaintiffs, and do assess their damages, by reason of the premises, at six hundred and ten dollars and two cents.

It is therefore considered by the court that the plaintiffs recover of the said defendant the sum of $610.02, together with $, their costs herein expended.

10 And afterwards, to wit, on the eighth day of December, in the year aforesaid, an entry was made upon the journal of said court in said cause, clothed in the words and figures following, to wit:

A. KAYSER & CO. vs. LEWIS WEITZEL. } 2512. Money.

This day came the attorney for the defendant, Channing Richards, esq., as also the plaintiff by attorney, W. M. Bateman, esq., and this case coming on to be heard upon the motion for a new trial, and the court, after the argument of counsel, and being fully advised in the premises, overrules said motion, to which order overruling said motion the defendant, by his attorney, excepts.

And it appearing that the defendant desires to carry the questions herein involved to the Supreme Court, it is ordered that execution in this case be stayed until the further order of the court.

11 And afterwards, to wit, on the thirteenth day of December, in the year aforesaid, an entry was made upon the journal of said court in said cause, clothed in the words and figures following, to wit:

Stay of execution.

AUGUSTUS KAYSER ET ALS. vs. LEWIS WEITZEL. } No. 2512. Money.

It appearing to the court that the defendant was an officer of the revenue, and that he acted in the performance of his official duty under the directions of the proper officer of the government in the acts complained of herein, it is therefore ordered by the court that no execution issue against the defendant on the judgment recovered against him herein so that the same *amy* be provided for and paid out of the proper appropriation by the Treasury.

And afterwards, to wit, on the eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-eight, an entry was made upon the journal of said court in said cause, clothed in the words and figures following, to wit:

12 AUGUSTUS KAYSER ET ALS. vs. LEWIS WEITZEL. } No. 2512. Money.

And now comes Channing Richards, attorney for the defendant, Lewis Weitzel, and presents to the court his bill of exceptions in said case,

which is allowed by the court, signed, sealed, and ordered to be made a part of the record.

Which said bill of exceptions is in the words and figures following, to wit.

Bill of exceptions.

Circuit court of the United States, southern district of Ohio.

A. KAYSER & CO., PLAINTIFFS, *vs.* LEWIS WEITZEL, DEFENDANT. } No. 2512.

Be it remembered that this cause coming on to be heard at the October term, A. D. 1877, of said court, before a jury, evidence was introduced by plaintiffs tending to prove—

1. That previous to Nov. 12th, 1875, the capacity of plaintiffs' 13 distillery was fixed by the survey at *xe* 703.40 bushels of grain each twenty-four hours, the fermenting period being forty-eight hours.

2. That on said 12th day of November an agent of plaintiffs' went to the collector's office and notified the deputy in charge of distilleries that plaintiffs desired to reduce their capacity to 524.59 bushels by closing three fermenting tubs then in use; said agent then signed three blank notices given him by said deputy, leaving them with said deputy, who filled up and filed the same; true copies of which said notices as filed are hereto attached as Exhibit A, B, & C. Said deputy thereupon closed and sealed the three tubs successively on the 12th, 13th, and 15th in accordance with said notices.

3. That on the 12th and 13th days of November plaintiffs mashed but 524.59 bushels of grain, but distilled the beer from 703.40 bushels of grain*ed*, mashed upon the 10th and 11th. On each remaining day of the month they used the exact amount of grain fixed by the capacity. On the receipt of the distiller's return for said month the Commissioner of Internal Revenue made an assessment against him for an excess of grain used during said month, being the excess of grain used on said 12th and 13th days of the month over and above the reduced capacity specified in the notices above set forth, to wit: in excess of 643.80 bushels on the 12th and 584.19 bushels on the 13th. And said assessment having been paid to defendant as collector of internal revenue, this suit has been brought to recover the same.

14 4. That the mode of reducing capacity by giving three notices and closing tubs on successive days after they had remained empty twenty-four hours, was the uniform practice in the first collection district of Ohio until changed in accordance with circular No. 38 from the Commissioner of Internal Revenue, dated Feb'y 20th, 1877; and the distiller desiring to reduce capacity was required by the collector to give the three notices.

5. That plaintiffs reported all spirits produced by them during said month, and paid tax thereon according to law.

The court thereupon charged the jury as follows:

"The conclusion to which I have arrived is that the producing capacity of this distillery was not in law reduced until the 15th day of November; that it continued, for the 12th and 13th days of November, to be 703.40 bushels. And this being the amount of grain in fact used,

there was no use of grain by the distiller in excess of the capacity of his distillery. The assessment was therefore illegal."

To which said charge the defendant by his attorney then and there excepted.

And thereupon the defendant, by his attorney, asked the court to instruct the jury as follows:

"When the distiller gave notice in the form prescribed that he desired to reduce capacity on and after a day specified in the notice by closing a designated fermenting tub, and such tub was thereupon closed by the deputy collector, in accordance with the notice, 15 the legal effect was to reduce the capacity of the distillery on after that day; and if the distiller on or after that day used grain in excess of the reduced capacity, although mashed before the reduction, the Commissioner was authorized by law to make an assessment for the excess; and the distiller cannot recover the same from the collector."

Which said charge was refused by the court, and defendant then and there excepted.

16 EXHIBIT A.

Notice of change in capacity.

126.—Revised April 13, 1876.

(In duplicate.)

(One copy to be forwarded to the Commissioner of Internal Revenue.)

NOV'R 12TH, 1875.

L. WEITZEL,
Collector 1 District of Ohio:

SIR: Application is hereby made for change of capacity of our distillery No. 9 from 703.40 bushels of grain, producing 2,602.58 gallons proof spirits, to 643.80 bushels of grain, producing 2,382.06 gallons proof spirits, each twenty-four hours, from corn; bushels of grain, producing gallons of proof spirits, each twenty-four hours, from rye; and gallons from molasses, by closing the following numbered fermenting tubs, changing the fermenting period from 48 hours to 48 hours, by varying the strength of the beer from 45 gallons per bushel to 45 gallons per bushel.*

Working capacity, in gallons.				Working capacity, in gallons.				Working capacity, in gallons.			
No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.
4	8,047										

Total working capacity of tubs in use after the change, in gallons, from corn, 86,913.

* NOTE.—Forty-five gallons of beer is the maximum number representing a bushel in the fermenting tubs, except in sour-mash distilleries, where sixty gallons is allowed. Changes in capacity by changing the fermenting period or varying the strength of beer will be allowed only when the notice is accompanied by a new survey.

Total working capacity of tubs in use after the change, in gallons, from rye,

To take effect on and after November 12th, 1875.

We will thank you to send the proper officer to close the tubs specified.

(Signed) A. KAYSER & CO.,
Distiller.

Copy.

I certify that on this the 12th day of November, 1875, I visited the distillery of A. Kayser & Co., No. 9, and caused fermenting tubs Nos. 4 to be closed, by closing beer troughs of same, in accordance with the above notice.

(Signed) E. C. URNER,
Deputy Collector.

COLLECTOR'S OFFICE, 1 DISTRICT OHIO,
Nov'r 12, 1875.

I certify that the above application was complied with on Nov'r 12, 1875, by closing the fermenting tubs specified, changing the fermenting period, or authorizing the setting of beer at the strength specified, and that the capacity of said A. Kayser & Co.'s distillery No. 9 is, from that date, fixed at 643.80 bushels of grain and 2,382.06 gallons of proof spirits, each twenty-four hours, from corn; bushels of grain and gallons of proof spirits, each twenty-four hours, from rye; and gallons from molasses, in accordance with survey of said distillery made by E. C. Urner, April 30th, 1874.

(Signed) LEWIS WEITZEL,
Collector.

17 EXHIBIT B.

Notice of change in capacity.

126.—Revised April 13, 1876.

(In duplicate.)

(One copy to be forwarded to the Commissioner of Internal Revenue.)

NOV. 12, 1875.

L. WEITZEL,
Collector 1 District of Ohio:

SIR: Application is hereby made for change of capacity of our distillery No. 9 from 643.80 bushels of grain, producing 2,382.06 gallons proof spirits, to 584.19 bushels of grain, producing 2,161.50 gallons proof spirits, each twenty-four hours, from corn; bushels of grain, producing gallons of proof spirits, each twenty-four hours, from rye; and gallons from molasses, by the following numbered fermenting tubs, changing the fermenting period from 48 hours to 48 hours, by varying the strength of the beer from 45 gallons per bushel to 45 gallons per bushel.*

* NOTE.—Forty-five gallons of beer is the maximum number representing a bushel in the fermenting tubs, except in sour-mash distilleries, where sixty gallons is allowed. Changes in capacity by changing the fermenting period or varying the strength of beer will be allowed only when the notice is accompanied by a new survey.

Working capacity, in gallons.				Working capacity, in gallons.				Working capacity, in gallons.			
No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.
8	8,047										

Total working capacity of tubs in use after the change, in gallons, from corn, 78,866.

Total working capacity of tubs in use after the change, in gallons, from rye,

To take effect on and after November 13th, 1875.

Will thank you to send the proper officer to close the tubs specified.

(Signed) A. KAYSER & CO.,
Distiller.

Copy.

I certify that on this the 13th day of Nov'r, 1875, I visited the distillery of A. Kayser & Co., No. 9, and caused fermenting tubs Nos. 8 to be closed, by closing beer trough of same, in accordance with the above notice.

(Signed) E. C. URNER,
Deputy Collector.

COLLECTOR'S OFFICE, 1 DISTRICT OHIO,
Nov'r 13th, 1875.

I certify that the above application was complied with on Nov'r 13th, 1875, by closing the fermenting tubs specified, changing the fermenting period, or authorizing the setting of beer at the strength specified, and that the capacity of said A. Kayser & Co.'s distillery No. 9 is, from that date, fixed at 584.19 bushels of grain and 2,161.50 gallons of proof spirits, each twenty-four hours, from corn; bushels of grain and gallons of proof spirits, each twenty-four hours, from rye; gallons from molasses, in accordance with survey of said distillery made by E. C. Urner, April 30, 1874.

(Signed) LEWIS WEITZEL,
Collector.

18 EXHIBIT C.

Notice of change in capacity.

126.—Revised April 13, 1876.

(In duplicate.)

(One copy to be forwarded to the Commissioner of Internal Revenue.)

NOV'R 12, 1875.

L. WEITZEL,
Collector 1 District of Ohio:

SIR: Application is hereby made for change of capacity of our distillery, No. 9, from 584.19 bushels of grain, producing 2,161.50 gallons proof spirits, to 524.59 bushels of grain, producing 1,940.98 gallons proof spirits, each twenty-four hours, from corn; bushels of grain, pro-

ducing gallons of proof spirits, each twenty-four hours, from rye; and gallons from molasses, by the following numbered fermenting tubs, changing the fermenting period from 48 hours to 48 hours, by varying the strength of the beer from 45 gallons per bushel to 45 gallons per bushel.*

Working capacity, in gallons.				Working capacity, in gallons.				Working capacity, in gallons.			
No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.	No.	Corn.	Rye.	Molasses.
7	8,047										

Total working capacity of tubs in use after the change, in gallons, from corn, 70,819.

Total working capacity of tubs in use after the change, in gallons, from rye,

To take effect on and after November 15th, 1875.

We will thank you to send the proper officer to close the tubs specified.

(Signed) A. KAYSER & CO.,
Distiller.

Copy.

I certify that on this the 15th day of November, 1875, I visited the distillery of A. Kayser & Co., No. 9, and caused fermenting tubs Nos. 7 to be closed, by closing beer trough of same, in accordance with the above notice.

(Signed) E. C. URNER,
Deputy Collector.

COLLECTOR'S OFFICE, 1 DISTRICT OHIO,
Nov'r 15th, 1875.

I certify that the above application was complied with on Nov'r 15th, 1875, by closing the fermenting tubs specified, changing the fermenting period, or authorizing the setting of beer at the strength specified, and that the capacity of said A. Kayser & Co.'s distillery No. 9 is, from that date, fixed at 524.59 bushels of grain and 1,940.98 gallons of proof spirits each twenty-four hours from corn; bushels of grain and gallons of proof spirits each twenty-four hours from rye; and gallons from molasses, in accordance with survey of said distillery made by E. C. Urner, April 30, 1874.

(Signed) LEWIS WEITZEL,
Collector.

19 Whereupon defendant tendered this his bill of exceptions, and prayed that the same might be signed, sealed, and allowed, and made part of the record; which is done accordingly.

In testimony whereof I have hereunto set my hand and seal, this 11th day of January, A. D. 1878, being one of the days of said October term.

[SEAL.] PHILIP B. SWING,
Judge of the District Court of the United States for the Southern District of Ohio, sitting as Circuit Judge.

* NOTE—Forty-five gallons of beer is the maximum number representing a bushel in the fermenting tubs, except in sour-mash distilleries, where sixty gallons is allowed. Changes in capacity by changing the fermenting period or varying the strength of beer will be allowed only when the notice is accompanied by a new survey.

20 THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Thomas Ambrose, clerk of the circuit court of the United States within and for the southern district of Ohio, hereby certify that the foregoing is a true and correct transcript of the record and proceedings in the case of Augustus Kayser et als. vs. Lewis Weitzel, as the same remain in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 30th day of January, A. D. 1878, and in the 102nd year of the Independence of the United States of America.

Attest:
[SEAL.]

THO'S AMBROSE,
Clerk U. S. Circuit Court S. D. O.

21 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States within and for the southern district of Ohio, greeting:

Because in the record and proceedings and also in the rendition of a judgment in a plea which is in the said circuit court before you between Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph Kneimuller, and George Karholf, plaintiffs, and Lewis Weitzel, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the second Monday in October next, in the said Supreme Court then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and customs of the United States, should be done.

22 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eighth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the 102nd.

Attest:
[SEAL.]

THO'S AMBROSE,
Clerk U. S. C. C., S. D. O.

23 UNITED STATES OF AMERICA, *ss:*

To Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph Kneimuller, and George Karholf, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in

the clerk's office of the circuit court of the United States for the sixth judicial circuit and southern district of Ohio, wherein Lewis Weitzel is plaintiff and you, Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph Kneimuller, and George Karholf are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and in 102nd year of the Independence of the United States of America.

[SEAL.] PHILIP B. SWING,
District Judge, holding the Circuit Court of the U. S. for the Southern District of Ohio.

I hereby acknowledge service of the foregoing citation for Augustus Kayser, George Gerke, William Kessler, Peter Kessler, Adolph
24 Kneimuller, and George Karholf.
Cincinnati, March 5th, 1878.

WARREN M. BATEMAN,
Att'y for Defendant in Error.

(Indorsement on cover:) No. 402. Lewis Weitzel, collector of internal revenue, plaintiff in error, vs. Augustus Kayser, George Gerke, Wm. Kessler, Peter Kessler, Adolph Kneimuller, and George Karholf. S. Ohio. C. C. U. S. Filed 12th April, 1878.